

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI

ROESLEIN & ASSOCIATES, INC.,

Plaintiff,

v.

WENDT, LLP,

Defendant.

)
)
)
)
)
)
)
)
)
)
)

ORAL ARGUMENT REQUESTED

Case No: 4:22-cv-01105-RWS

DEFENDANT’S MOTION FOR PARTIAL SUMMARY JUDGMENT

COMES NOW Defendant Wendt, LLP (“Wendt”), by and through its undersigned attorneys, and for its Motion for Partial Summary Judgment pursuant to FED. R. CIV. P. 56, states as follows:

1. Plaintiff Roeslein & Associates, Inc. (“Roeslein”) filed an Amended Complaint asserting three claims based on Wendt’s alleged default under their agreement. (ECF Doc. 54).

2. In further support of this Motion for Partial Summary Judgment, Wendt files herewith and incorporates herein by this reference, its supporting Memorandum of Law, and a Statement of Uncontroverted Material Facts in accordance with Local Rule 4.01(E).

3. All facts cited in the Statement of Uncontroverted Material Facts are beyond reasonable dispute as established by the pleadings, Roeslein’s supplemental interrogatory answers, and documents produced in discovery. There is no genuine issue of material fact, and Wendt is entitled to judgment as a matter of law.

4. Based on the Statement of Uncontroverted Material Facts as developed in the Memorandum of Law in Support, this matter is appropriate for summary judgment and Wendt is entitled to partial judgment as a matter of law because the facts and law show that Roeslein’s

alleged telephonic termination for default of the parties' agreement did not effect termination for default because written notice was required by the agreement's plain and unambiguous terms. *See Baker v. Missouri Nat'l Life Ins. Co.*, 372 S.W.2d 147, 152 (Mo. App. 1963) (telephonic termination of contract insufficient because contract required written notice).

5. Because Plaintiff failed to effect termination for default as required by the parties' agreement, Roeslein has no claim for any alleged costs that it incurred to finish the project.

6. Wendt requests oral argument under Local Rule 4.02.

WHEREFORE, Defendant Wendt, LLP respectfully requests the Court enter an Order granting the instant motion, and for such other and further relief the Court deems just and proper under the circumstances.

SANDBERG PHOENIX & von GONTARD P.C.

By: /s/ M. Quinn Murphy

M. Quinn Murphy, MO #54451
Stephen M. Murphy, MO #56417
James C. Keaney, MO #67173
600 Washington Avenue - 15th Floor
St. Louis, MO 63101-1313
314-231-3332
314-241-7604 (Fax)
qmurphy@sandbergphoenix.com
smurphy@sandbergphoenix.com
jkeaney@sandbergphoenix.com

Ross A. Boden, MO #63453
4600 Madison Avenue, Suite 1000
Kansas City, MO 64112
816-627-5332
816-627-5532 (Fax)
rboden@sandbergphoenix.com

*Attorneys for Defendant
Wendt, LLP*

CERTIFICATE OF SERVICE

I hereby certify that on December 15, 2023 the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system to all counsel of record.

/s/ M. Quinn Murphy